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**BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES**



Application Number: 10/810,045
Filing Date: March 26, 2004
Appellant(s): CHAPMAN ET AL.

Mary Yawney Redman
For Appellant

**EXAMINER'S ANSWER**

This is in response to the appeal brief filed February 12, 2007 appealing from the Office action mailed September 12, 2006.

**(2) Related Appeals and Interferences**

The Examiner is not aware of any related appeals, interferences, or judicial proceedings that will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

**(3) Status of Claims**

The statement of the status of claims contained in the brief is correct.

**(4) Status of Amendments After Final**

The Appellant's statement of the status of amendments after final rejection contained in the brief is correct.

**(5) Summary of Claimed Subject Matter**

The summary of claimed subject matter contained in the brief is correct.

**(6) Grounds of Rejection to be Reviewed on Appeal**

The Appellant's statement of the grounds of rejection to be reviewed on appeal is correct.

**(7) Claims Appendix**

The copy of the appealed claims contained in the Appendix to the brief is correct.

**(8) Evidence Relied Upon**

| | | |
|---|---|---|
| 5,836,993 | Cole | 11-1998 |
| 6,370,428 | Synder et al. | 04-2002 |
| 5,285,781 | Brodard | 02-1994 |
| 6,141,584 | Rockwell et al. | 10-2000 |

**(9) Grounds of Rejection**

The following ground(s) of rejection are applicable to the appealed claims:

***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

> A person shall be entitled to a patent unless –
>
> (b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 19, 21, 24-25, 28-29, 34-35, 37, 39 and 41-42 are rejected under 35 U.S.C. 102(b) as being anticipated by Cole (U.S. 5,836,993). As to Claims 19, 29, 37 and 42, Cole discloses an external defibrillator 10 comprising an energy delivery system, read as a therapy delivery module 14, and a controller, read as a processor 12 (see Cole Figs. 1 and 12 and column 4, lines 55-65). Cole discloses that the processor 12 may be embodied via a microprocessor, controller, gate array or other control logic or any combination of such elements (see Cole column 4, lines 62-65). The microprocessor-based processor 12 of Cole comprises a computer readable medium/first memory 16 comprising the instructions that cause the processor 12 to carry out the disclosed invention (see Cole column 1, lines 63-67, column 2, lines 31-49, column 4, lines 55-67 and column 5, lines 15-16).

The processor 12 of Cole determines whether a patient is one of an anticipated patient or a non-anticipated patient and delivers therapy to patient via defibrillator 10 according to a general profile (i.e. the patient is an adult/non-anticipated and the instructions for defibrillation are stored on a first memory 16) or a profile associated with an "anticipated patient" (i.e. the patient is a child and the instructions for defibrillation are stored on a second memory 22) (see Cole column 5, lines 14-27 and lines 66-67 and column 6, lines 1-6). The Examiner takes the

position that since a user has to attach the removable memory 22 (see Cole column 5, lines 1-7), treating a child or pediatric patient is "anticipated by the user" and thus this type of patient is synonymous with an "anticipated patient". Cole also discloses that the processor 12 determines whether a patient is an "anticipated patient" via actuator 24 or alternatively via a transfer routine stored on the computer-readable medium/first memory 16 (see Cole column 1, lines 63-67 and column 2, lines 31-49). Specifically, when the actuator 24 is not actuated, the processor 12 determines that the patient is the not an "anticipated pediatric/child" patient and retrieves instructions for general adult therapy delivery from first memory 16. When a user actuates the actuator 24, upon attachment of the removable second memory 22, the processor 12 determines that the patient is an "anticipated" patient and retrieves instructions for pediatric therapy delivery from the second memory 22. Alternatively, Cole specifies that "the transfer of communication from one memory to another may also be a strictly software operation, with the controller responding to stored instructions" (column 5, lines 28-44).

The "anticipated pediatric/child" patient of Cole is a single patient for receiving therapy by defibrillator 10 – interpreted as Appellant's "individual patient". This "individual patient" is associated with a treatment profile customized and specific to children, therefore the "anticipated pediatric/child individual patient" of Cole is "associated with a patient-specific, customized profile" (see Cole column 5, lines 28-43 and lines 66-67 and column 6, lines 1-6). Cole specifies, as discussed above that therapy is delivered by the therapy delivery module 14 according to one of a general profile if the patient is the non-anticipated (i.e. adult) patient or the customized profile if the patient is the anticipated patient (i.e. child) (see Cole column 5, lines 14-27 and lines 66-67 and column 6, lines 1-6).

As to Claims 21 and 39, the Examiner takes the position that since Cole discloses that the second memory 22 contains instructions used by the processor 12 to treat small children (i.e. instructions associated with the anticipated pediatric patient) and that the memory may be a solid state PC card (see Cole column 6, lines 4-6 and lines 47-55), the second memory 22 is synonymous with a patient identification device associated with the anticipated patient. In addition, Cole discloses that the external defibrillator 10 further comprises a port, read as an input circuit 20, and the processor 12 receives an indication from a patient identification device associated with the anticipated patient 22 via the actuator 24 of the input circuit 20 and determines whether the patient is the anticipated patient based on the indication (actuated or not) (see Cole Figs. 1-2 and column 5, lines 28-44). Cole further and alternatively specifies, in a discussion regarding an alternative embodiment of the defibrillator 100 that alternatively (see Cole Fig. 10), the processor 102 receives instructions from a first memory, ROM 114 to read a card identification source 212 of any second memory, data card 200 that might be attached to a port, read as an input circuit 116 of the defibrillator 100. Cole expressly discloses that the processor 102 receives an indication from the patient identification device, specifically the card identification 212 of second memory data card 200 via the input circuit 116 and further that the processor 102 thusly determines that the patient is the anticipated patient if the identification device 212 identifies the second memory data card 200 as one containing executable code (see Cole Fig. 10, column 9, lines 45-67, column 10, lines 1-2 and column 11, lines 28-41).

As to Claims 24 and 41, in addition to the arguments previously presented, Cole discloses that the external defibrillator 10 further comprises a port, read as an input circuit 20, and that the customized profile associated with the anticipated child/pediatric patient is stored within an

attachable second memory 22 (see Cole Figs. 1-2 and column 5, lines 28-44). The Examiner takes the position that since Cole discloses that the second memory 22 contains instructions used by the processor 12 to treat small children, the second memory is associated with the anticipated pediatric patient (see Cole column 6, lines 4-6 and lines 47-55). Cole also discloses that processor 12 retrieves the customized profile associated with the anticipated child/pediatric patient from the second memory 22 via the input circuit 20 and determines that the patient is the anticipated patient based on receipt (indication from actuation of actuator 24) (see Cole Figs. 1-2 and column 5, lines 28-44).

As to Claim 25, Cole discloses that the memory 22 associated with the anticipated pediatric patient is a removable medium for the defibrillator 10 (see Cole column 5, lines 17-27).

As to Claim 28, Cole disclose that the second memory 22 may be disposed at a location remote from device 10 and could communicate the processor's 12 instructions to the device from the remote location through input circuit 20 via a remote connection 48. Cole further discloses that the remove connection 48 may be a network (see Cole column 6, lines 30-46).

As to Claim 34, the second attachable memory 22 of Cole contains instruction sufficient to operate the device to treat the patient via the anticipated customized pediatric profile (see Cole column 5, lines 28-52 and line 66-67 and column 6, lines 1-6).

As to Claim 35, the first memory 16 of Cole contains instructions sufficient to operate the device to treat the patient via the general adult profile or non-anticipated patient profile (see Cole column 5, lines 14-27 and line 66-67 and column 6, lines 1-6).

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

Claims 22, 26-27 and 36 are rejected under 35 U.S.C. 103(a) as being unpatentable over Cole. As to Claims 22 and 26, Cole discloses the claimed invention as discussed above but does not expressly disclose a radio frequency identification (RFID) device that is interrogated by the defibrillator 10. At the time the invention was made, it would have been an obvious matter of design choice to a person of ordinary skill in the art to make the patient identification of the removable memory of Cole, i.e. the card identification 212, discussed above a readable magnetic stripe or radio-frequency identification device, because Appellant has not disclosed that the a removable memory card comprising a readable magnetic strip provides an advantage, is used for a particular purpose, or solves a stated problem. One or ordinary skill in the art, furthermore, would have expected Appellant's invention to perform equally well with the PC card comprising identification source 212 as taught by Cole, because it provides a removable memory/patient identification device associated with the anticipated pediatric patient easily interrogated by the processor of the defibrillator, as previously discussed by the Examiner.

Therefore, it would have been prima facie obvious to modify Cole to obtain the invention in as specified in the claim(s) because such a modification would have been considered a mere design consideration which fails to patentably distinguish over the defibrillator and the associated removable memory device disclosed by Cole.

As to Claim 27, Cole discloses a card identification source 212 and gat array, read as memory 204 within a PC card 200. Cole fails to specify that the removable PC card 200, as previously discussed by the Examiner, comprise a "consumer electronic device" such as a flash drive or the like. At the time the invention was made, it would have been an obvious matter of design choice to a person of ordinary skill in the art to make the removable memory of Cole a "consumer electronic device", because Appellant has not disclosed that such a memory provides an advantage, is used for a particular purpose, or solves a stated problem. One or ordinary skill in the art, furthermore, would have expected Appellant's invention to perform equally well with the PC card as taught by Cole, because it provides a removable memory/patient identification device associated with the anticipated pediatric patient easily interrogated by the defibrillator.

Therefore, it would have been prima facie obvious to modify Cole to obtain the invention in as specified in the claim(s) because such a modification would have been considered a mere design consideration which fails to patentably distinguish over the defibrillator and the associated removable memory device disclosed by Cole.

Claims 20 and 38 are rejected under 35 U.S.C. 103(a) as being unpatentable over Cole in view of Snyder et al. (U.S. 6,370,428) (herein Snyder). Appellant differs from Cole in that that processor receives an indication from a user via a user interface and determines whether the patient is the anticipated patient based on the indication. The Examiner considers the use of a user interface for inputting indications that allow a processor to determine the type of patient well known and conventional in the art of external defibrillators with Snyder being but one example (see Snyder Abstract, Fig. 5, column 3, lines 30-67 and column 4, lines 1-38).

Claims 23 and 40 are rejected under 35 U.S.C. 103(a) as being unpatentable over Cole in view of Brodard (U.S. 5,285,781). Cole discloses the claimed invention as discussed above except that the second memory 22 or the PC card 200 does not comprise one of a plurality of anticipated patient profiles each associated with one of a plurality of anticipated patients.

Brodard, however, discloses electrical stimulation apparatuses 2, 50 controlled by detachable and interchangeable information mediums 4, 53, previously programmed as a function of the treatment for each respective patient (see Brodard Abstract, Figs. 1a-1b, column 5, lines 35-42, column 6, lines 13-14 and column 7, lines 18-63). Brodard further discloses that detachable and interchangeable information mediums 4, 53 may be realized in a microchip card having the format of a credit card containing live memories or RAM (see Brodard column 9, lines 40-60). The Examiner takes the position that the electrical stimulation apparatuses of Brodard are analogous with the electrical stimulation apparatus of external defibrillator 10 of Cole since both receive data/memory cards to control their therapeutic outputs. Brodard does not explicitly state why the detachable and interchangeable information mediums 4, 53, previously programmed as a function of the treatment for each respective patient are used, but it appears that such a detachable and interchangeable information medium is used to personalize the therapeutic output of the stimulation apparatus per patient. It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the system as taught by Cole, with the detachable and interchangeable information mediums previously programmed as a function of the treatment for one of a plurality of patients as taught by Brodard, since such a modification would provide the system with personalized memory cards for providing personalized defibrillation treatment.

Claim 36 is rejected under 35 U.S.C. 103(a) as being unpatentable over Cole in view of Rockwell et al. (U.S. 6,141,584) (herein Rockwell). Cole discloses the claimed invention as discussed above except that the external defibrillator 10 is not specified to be an automated external defibrillator (AED).

Rockwell, however, teaches that AEDs can automatically analyze the electrocardiogram (ECG) rhythm of a patient to determine if defibrillation is necessary and thus prompt the responder/user to press a shock button to deliver the defibrillation shock to the patient. Rockwell also discloses that AEDs are designed to be used primarily by first responders who may not be trained in advanced cardiac life support (ACLS) techniques, advancing the versatility of who may use the device to treat a patient (see Rockwell column 1, lines 44-67). It would have been obvious to one having ordinary skill in the art at the time the invention was mode to modify the system of Cole in view of Rockwell to include an AED in order to provide a more user friendly and versatile external defibrillator that may be used by responders/users not trained in ACLS techniques.

**(10) Response to Argument**

With regard to Claims 19 and 37, the Appellant argues at page 6 of the Appeal Brief that Cole does not disclose a processor that determines whether a patient is one of an anticipated patient and a non-anticipated patient, where an anticipated patient is an individual patient associated with a patient-specific, customized profile because Cole teaches treating two different classes of patients, pediatric and adult. The Examiner respectfully disagrees. As previously discussed by the Examiner, the processor 12 of Cole determines whether a patient is one of a pediatric patient, read as an anticipated patient or an adult, read as a non-anticipated patient and

delivers therapy to patient via defibrillator 10 according to a pediatric profile or an adult profile, respectively (see Cole column 5, lines 14-27 and lines 66-67 and column 6, lines 1-6). The "anticipated pediatric/child" patient of Cole is a single patient for receiving therapy by defibrillator 10 – interpreted as Appellant's "individual patient". This "individual patient" is associated with a treatment profile customized and specific to children, therefore the "anticipated pediatric/child individual patient" of Cole is "associated with a patient-specific, customized profile" (see Cole column 5, lines 28-43 and lines 66-67 and column 6, lines 1-6).

The Appellant further argues at page 7 of the Appeal Brief that "the Examiner's position is that since Cole's defibrillator treats one patient at a time, and since Cole's defibrillator can treat two different classes of patient's, (i.e. adult and pediatric), that Cole anticipates the claims. The Examiner respectfully disagrees with the Appellant's interpretation of the Examiner's position taken in the Final Rejection of September 12, 2006. The Examiner considered Cole to anticipate the claims because of the following analysis, as was specified in the Final Recjection.

The Examiner interprets the adult profile to be synonymous with a "general profile" because the defibrillation therapy parameters are stored in first non-removable memory 16 of the defibrillator 10 that is sufficient to operate the defibrillator 10 on its own and in general manner without, or prior to, any manipulation of the defibrillator's operation by a user (see Cole column 5, lines 14-17). The Examiner further interprets the adult patient to be synonymous with a "non-anticipated patient" that is not "anticipated by a user" because the patient is treated without, or prior to, any manipulation of the defibrillator's operation by a user (see Cole column 5, lines 14-17). The Examiner takes the position that since a user has to attach the removable memory 22

(see Cole column 5, lines 1-7), treating a child or pediatric patient is "anticipated by the user" and thus this type of patient is synonymous with an "anticipated patient".

Cole also discloses that the processor 12 determines whether a patient is an "anticipated patient" via actuator 24 or alternatively via a transfer routine stored on the computer-readable medium/first memory 16 (see Cole column 1, lines 63-67 and column 2, lines 31-49). Specifically, when the actuator 24 is not actuated, the processor 12 determines that the patient is the not an "anticipated pediatric/child" patient and retrieves instructions for its "general" operation from first memory 16. When a user actuates the actuator 24, upon attachment of the removable second memory 22, the processor 12 determines that the patient is an "anticipated" patient and retrieves instructions for customized pediatric therapy delivery from the second memory 22. Alternatively, Cole specifies that "the transfer of communication from one memory to another may also be a strictly software operation, with the controller responding to stored instructions" (column 5, lines 28-44). The "anticipated pediatric/child" patient of Cole is a single patient for receiving therapy by defibrillator 10 – interpreted as Appellant's "individual patient". This "individual patient" is associated with a treatment profile customized and specific to children, therefore the "anticipated pediatric/child individual patient" of Cole is "associated with a patient-specific, customized profile" (see Cole column 5, lines 28-43 and lines 66-67 and column 6, lines 1-6).

In regards to Claims 21 and 39, the Appellant further argues at page 7 of the Appeal Brief that there is no patient identification device disclosed within the reference of Cole. The Examiner respectfully disagrees and notes that Cole discloses at least two alternative embodiments of a patient identification device synonymous with that of Appellant. The

Examiner takes the position that since Cole discloses that the second memory 22 contains instructions used by the processor 12 to treat small children (i.e. instructions associated with the anticipated pediatric patient) and that the memory may be a solid state PC card (see Cole column 6, lines 4-6 and lines 47-55), the second memory 22 is synonymous with a patient identification device associated with the anticipated patient. In addition, Cole discloses that the external defibrillator 10 further comprises a port, read as an input circuit 20, and the processor 12 receives an indication from a patient identification device associated with the anticipated patient 22 via the actuator 24 of the input circuit 20 and determines whether the patient is the anticipated patient based on the indication (actuated or not) (see Cole Figs. 1-2 and column 5, lines 28-44). Cole further and alternatively specifies, in a discussion regarding an alternative embodiment of the defibrillator 100 that alternatively (see Cole Fig. 10), the processor 102 receives instructions from a first memory, ROM 114 to read a card identification source 212 of any second memory, data card 200 that might be attached to a port, read as an input circuit 116 of the defibrillator 100. Cole expressly discloses that the processor 102 receives an indication from the patient identification device, specifically the card identification 212 of second memory data card 200 via the input circuit 116 and further that the processor 102 thusly determines that the patient is the anticipated patient if the identification device 212 identifies the second memory data card 200 as one containing executable code (see Cole Fig. 10, column 9, lines 45-67, column 10, lines 1-2 and column 11, lines 28-41).

Appellant further argues, at page 7 of the Appeal Brief, that the PC card of Cole is not in any way associated with an individual patient or that it identifies an individual to the processor. The Examiner respectfully disagrees. Cole expressly discloses that the operational

characteristics of defibrillator 100 can be controlled by a data card in several ways, including operating its patient specific treatment mode (see Cole column 9, lines 57-58 and column 11, lines 28-35). Cole expressly discloses that the processor 102 receives an indication from the patient identification device, specifically the card identification 212 of second memory data card 200 via the input circuit 116 and further that the processor 102 thusly determines that the patient is the anticipated patient if the identification device 212 identifies the second memory data card 200 as one containing executable code. The PC card 200 of Cole, described by Cole in relation to Cole Fig. 10, is simply an alternate embodiment of the second memory 22 described by Cole in relation to Cole Figs. 1 and 2 and such a fact is pointed out by Cole expressly and explicitly at column 11, lines 28-30 (see Cole Fig. 10, column 9, lines 45-67, column 10, lines 1-2 and column 11, lines 28-41).

In regards to Claims 22, 26-27 and 36, Appellant argues, "one of the requirements of a *prima facie* case of obviousness is that all limitations of the clam be shown in the prior art". The Examiner agrees that this is indeed one requirement for establishing a prima facie case of obviousness, but it is not however, the only requirement and it should not be taken out of context. The Examiner has shown support to the conclusion(s) of obvious subject matter as discussed in the Final Rejection using a convincing line of reasoning as to why one of ordinary skill in the art would have found the claimed invention to be obvious. Upon review of the Appellant's disclosure the Examiner has ascertained that the limitations in question were not disclosed as serving any advantage or purpose and further that Appellant has not disclosed that the limitations in question are used to solve a stated problem. It was because of these

determinations that the Examiner reasoned that invention of Cole would have performed equally well as the claimed invention.

Specifically, in regard to Claims 22 and 26, Cole discloses the claimed invention as discussed above but does not expressly disclose a radio frequency identification (RFID) device that is interrogated by the defibrillator 10. At the time the invention was made, it would have been an obvious matter of design choice to a person of ordinary skill in the art to make the patient identification of the removable memory of Cole, i.e. the card identification 212, discussed above a readable magnetic stripe or radio-frequency identification card, because Appellant has not disclosed that the a removable memory card comprising a readable magnetic strip provides an advantage, is used for a particular purpose, or solves a stated problem. One or ordinary skill in the art, furthermore, would have expected Appellant's invention to perform equally well with the PC card comprising identification source 212 as taught by Cole, because it provides a removable memory/patient identification device associated with the anticipated pediatric patient easily interrogated by the processor of the defibrillator, as previously discussed by the Examiner. Therefore, it would have been prima facie obvious to modify Cole to obtain the invention in as specified in the claim(s) because such a modification would have been considered a mere design consideration which fails to patentably distinguish over the defibrillator and the associated removable memory device disclosed by Cole.

In specific regards to Claims 22 and 26, Appellant has stated at pages 8-9 of the Appeal Brief that Cole does not suggest "wireless radio-frequency communication". The limitations, upon which the Appellant relies, i.e. wireless radio-frequency communication, are not stated in the claims. It is the claims that define the claimed invention, and it is claims, not specification

that are anticipated or unpatentable. Claims 22 and 26 only require that the memory associated with the anticipated patient or the patient identification device comprise a radio-frequency identification device that is interrogated by the external defibrillator. Neither Claim 22 nor Claim 26 requires wireless communication. It is respectfully noted that an example or embodiment of the patient identification device of Appellant is specified to be an RFID "card" at page 3 of the Appellant's disclosure, and there is no specification or disclosure to the best of the Examiner's knowledge relating the RFID to "wireless communication". Again, upon review of the Appellant's disclosure the Examiner has ascertained that the limitation in question (i.e. the RFID) was not disclosed as serving any advantage or purpose and further that Appellant has not disclosed that the limitations in question are used to solve a stated problem. It was because of these determinations that the Examiner reasoned that the invention of Cole would have performed equally well as the claimed invention. The patient identification device type "card" of Cole appears to perform the same function as the patient identification device type "card" of Appellant. One or ordinary skill in the art would have expected Appellant's invention to perform equally well with the PC card comprising identification source 212 as taught by Cole, because it provides a removable memory/patient identification device associated with the anticipated pediatric patient easily interrogated by the processor of the defibrillator.

In regards to Claims 20 and 38, Appellant argues at page 9 of the Appeal Brief that there is no teaching that would have suggested the desirability of modification to arrive at the claimed invention. The Examiner respectfully disagrees. Cole discloses that the external defibrillator 10 comprises a port, read as an input circuit 20, and the processor 12 receives an indication from a patient identification device associated with the anticipated patient 22 via the actuator 24 of the

input circuit 20 and determines whether the patient is the anticipated patient based on the indication (actuated or not). Cole specifies that actuator by be a button "or other input" separate from port 20 (see Cole Figs. 1-2 and column 5, lines 28-44). Cole discloses the claimed invention as previously discussed except that it is not specified that the actuator be a user interface or that that processor receives the indication from a user via a user interface. The Examiner maintains that it is conventional and well known in the art for external defibrillators to comprise user interfaces and further that it is conventional and well known in the art that user interfaces of an external defibrillator are often provided for inputting indications that allow a processor to determine the type of patient to be treated. It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the actuator as taught by Cole, with a user interface since it was known in the art that user interfaces are often provided as part of an external defibrillator for inputting indications that allow a processor to determine the type of patient to be treated. A user interface is an "input", thus it is unreasonable to argue that one of ordinary skill in the art would not be motivated to arrive at the Appellant's invention. The Examiner has provided Snyder as being but one example of the conventionality of a user interface serving as an input (see Snyder Abstract, Fig. 5, column 3, lines 30-67 and column 4, lines 1-38). The Examiner has provided a convincing line of reasoning as to why one of ordinary skill in the art would have found the claimed invention to be obvious and has further provided a teaching.

In regards to Claims 23 and 40, Appellant argues at page 10 of the Appeal Brief that Brodard is nonanalogous art. The Examiner respectfully disagrees. It has been held that a prior art reference must either be in the field of Appellant's endeavor or, if not, then be reasonably

pertinent to the particular problem with which the Appellant was concerned, in order to be relied upon as a basis for rejection of the claimed invention. In this case, the Examiner considers Brodard to be in the field of Appellant's endeavor because both the invention of Brodard and that of Appellant relate to external electrical stimulation apparatuses. Furthermore, both the invention of Brodard and that of Appellant receive data/memory cards in order to control their therapeutic outputs, thus Brodard is reasonably pertinent to the particular problem with which the Appellant was concerned. Furthermore, both the invention of Brodard and that of Appellant personalize the therapeutic output of the stimulation apparatus per patient, thus Brodard is reasonably pertinent to the particular problem with which the Appellant was concerned. As previously discussed, it would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the system as taught by Cole, with the detachable and interchangeable information mediums previously programmed as a function of the treatment for one of a plurality of patients as taught by Brodard, since such a modification would provide the system with personalized memory cards for providing personalized treatment.

In regards to Claims 27 and 36, Appellant's arguments are for the most part conclusory and supported merely by Appellant's pervious arguments regarding the alleged deficiencies of Cole. The Examiner maintains that the processor 12 of Cole determines whether a patient is one of an anticipated patient or a non-anticipated patient and delivers therapy to patient via defibrillator 10 according to a general profile (i.e. the patient is an adult/non-anticipated and the instructions for defibrillation are stored on a first memory 16) or a profile associated with an "anticipated patient" (i.e. the patient is a child and the instructions for defibrillation are stored on a second memory 22) (see Cole column 5, lines 14-27 and lines 66-67 and column 6, lines 1-6).

Cole also discloses that the processor 12 determines whether a patient is an "anticipated patient" via actuator 24 or alternatively via a transfer routine stored on the computer-readable medium/first memory 16 (see Cole column 1, lines 63-67 and column 2, lines 31-49).

**(11) Related Proceeding(s) Appendix**

No decision rendered by a court or the Board is identified by the examiner in the Related Appeals and Interferences section of this examiner's answer.

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,

Jessica L. Reidel 05/14/07

Patent Examiner

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